

**SYNOPSIS OF THE ONE CRIMINAL OPINION IN THE MISSISSIPPI SUPREME
COURT HANDED DOWN JUNE 7, 2010**

Mackey v. State, No. 2007-CT-1785-SCT (Miss. June 7, 2010)

CRIME: PCR – Transfer of a Controlled Substance

SENTENCE: 30 years, suspended, and banishment 100 miles from Hattiesburg

COURT: Forrest County Circuit Court

TRIAL JUDGE: Hon. Robert B. Helfrich

APPELLANT ATTORNEY: Ronnie Mackey (Pro Se)

APPELLEE ATTORNEY: Deirdre McCrory

DISPOSITION: Denial of PCR reversed and rendered; [COA opinion reversed](#). Dickinson, Justice, for the Court. Waller, C.J., Carlson, P.J., Lamar and Chandler, JJ., Concur. Carlson, P.J., Specially Concur with Separate Written Opinion Joined by Waller, C.J., Dickinson, Lamar and Chandler, JJ. Randolph, J., Dissents with Separate Written Opinion. Graves, P.J., Concur in Part and Dissents in Part with Separate Written Opinion Joined by Kitchens, J.; Randolph, J., Joins in Part. Pierce, J., Not Participating.

ISSUES: Whether the trial judge erred in revoking petitioner's suspended sentence when he violated the banishment condition.

FACTS: Ronnie Mackey, a/k/a Ronald Fantae Mackey, pled guilty to one count of transfer of a controlled substance, and was sentenced to a 30 year suspended sentence. As a condition to his suspended sentence, Mackey was ordered to leave Hattiesburg within 48 hours, and, for 30 years, remain 100 miles away from Hattiesburg. Despite the court's ruling, Mackey (involuntarily) remained in jail for approximately 50 hours after sentencing. Thus, when he was released from jail, he was already in violation of the banishment order. He was still in town 6 days later when he was spotted by a police officer and arrested for violating the condition of his suspended sentence. The trial court revoked the suspension and imposed the full 30 year sentence. Mackey filed a PCR, which the trial court dismissed without an evidentiary hearing. The Court of Appeals affirmed. [Mackey v. State](#), No. 2007-CP-01785-COA (Miss.App. April 7, 2009). The COA found that Mackey did not deny that he violated the terms of the suspension and admitted to it. Additionally, the COA held that a prisoner may not challenge the legality of a lenient sentence only after he is unable to satisfy the conditions attached to it. Mackey was subsequently granted certiorari review.

HELD: Although banishment has never been forbidden, arbitrary banishment will not be upheld. Accordingly, justification for the banishment must clearly be established in the record. The only evidence in the record which remotely could have been viewed by the trial judge as justification for banishment was the prosecutor's representation that Mackey had one relative in Forrest County from whom he was estranged. This single, benign reference to an "estranged relative" was a "woefully inadequate factual basis for banishment."

==>Banishment from a large geographical area, especially outside of the State, struggles to serve any rehabilitative purpose, and implicates serious public policy questions against the dumping of convicts on another jurisdiction. Compelling reasons must be offered to justify allowing a defendant convicted of a serious criminal offense to leave the jurisdiction unsupervised, as opposed to incarceration or keeping the defendant in the jurisdiction of the court, with supervision.

==> The Court held that not all banishments are improper or disfavored. However, a trial judge's reasons for ordering banishment — regardless of the size of the geographic area — must be articulated and supported in the record by a factual basis. The trial court's order revoking Mackey's suspended sentence based on a violation of the banishment order is reversed and rendered.

CARLSON, PRESIDING JUSTICE, SPECIALLY CONCURRING:

==>Justice Carlson wrote to emphasis the trial court's straight suspended sentence was not illegal. "Instead, in today's case, we merely have found a lack of support in the record before us to justify the trial judge's imposition of the banishment provision as a condition of Mackey's suspended sentence. Since the trial judge's order revoking Mackey's suspended sentence is based solely on the 'violation' of the banishment provision of Mackey's suspended sentence, the revocation order must be reversed."

RANDOLPH, JUSTICE, DISSENTING:

==>Justice Randolph did not believe the trial judge abused his discretion by ordering banishment as a condition of a suspended sentence. Even if so, the remedy is vacation of the guilty plea, not a modification of the sentence. Mackey could then elect to negotiate a new plea or demand his right to a jury trial. He also believed the banishment condition was reasonably related to Mackey's intended rehabilitation.

GRAVES, PRESIDING JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

==>Justice Graves found that Mackey's plea was not voluntary. "Therefore, I would set aside Mackey's guilty plea. Hence, both the State and the defendant would be returned to the positions they were in before the plea agreement was entered."

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO61633.pdf>

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